

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 845

Introduced by Assembly Member Vargas

February 20, 2003

An act to amend ~~Section 5102 of~~, *Sections 5102 and 5311 of*, to add *Sections 5142 and 5317.5 to*, and to add Article 5.4 (commencing with Section 5243) *and Article 8.5 (commencing with Section 5323)* to Chapter 7 of Division 2 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 845, as amended, Vargas. Household goods carriers.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including transportation companies. Household goods carriers are subject to the jurisdiction and control of the commission under the Household Goods Carriers Act.

This bill would prohibit a household goods carrier from exercising a self-help remedy or failing to timely deliver property in its possession, unless the debtor and consignor, as defined were provided with a written qualifying contract. The bill would require the commission to adopt rules and regulations for written qualifying contracts that, at a minimum, provide an estimated cost of service, delivery destination, delivery date, and a description of the services to be rendered, to be delivered within a reasonable time. The bill would require that any change order to the written qualifying contract be in writing, specify

any change to the terms of the contract, and be executed by the debtor. The bill would prohibit a household goods carrier from failing to timely deliver household goods, personal effects, used office, store, or institution furniture and fixtures in their possession to the consignee, at the destination and on the date specified in the qualifying contract, upon request by the consignee, and tender of payment for the estimated cost of service and any valid change orders for service. The bill would provide that as an alternative to bringing a complaint before the commission, the consumer injured by a violation of these requirements may sue and receive treble damages or \$1,000, whichever is greater, interest on actual damages, injunctive relief, reasonable attorneys' fees, and costs of suit.

This bill would prohibit a household goods carrier from transporting household goods under a subhauling agreement unless the agreement is with another licensed household goods carrier and the customer or shipper is provided with reasonable notice and consents in writing to the subhauling arrangement. The bill would require the commission to make any rules and regulations necessary to enforce these requirements. The bill also would make a technical, nonsubstantive change. Because a violation of the Household Goods Carriers Act or an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by expanding a crime.

(2) The Public Utilities Act requires the commission to see that statutes affecting public utilities are enforced and obeyed, and that violations are promptly prosecuted and penalties to the state are recovered and collected. The act requires that upon request by the commission, the Attorney General or a district attorney aid the commission in any investigation, hearing, or trial under the act and authorizes the Attorney General or a district attorney to institute and prosecute actions for the enforcement of constitutional and statutory provisions pertaining to public utilities.

This bill would require the commission to ensure that the Household Goods Carriers Act is enforced and obeyed, and that violations are promptly prosecuted and penalties to the state are recovered and collected. The bill would require that upon request by the commission, the Attorney General or a district attorney aid the commission in any investigation, hearing, or trial under the the Household Goods Carriers Act and authorizes the Attorney General, a district attorney, or city attorney to institute and prosecute actions for the enforcement of the Household Goods Carriers Act, except to enforce a penalty.



(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 5102 of the Public Utilities Code is amended to read:

5102. The use of the public highways for the transportation of used household goods and personal effects for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon those highways; to secure to the people just, reasonable, and nondiscriminatory rates for transportation by carriers operating upon the highways; and to secure full and unrestricted flow of traffic by motor carriers over the highways that will adequately meet reasonable public demands by providing for the regulation of rates of all carriers so that adequate and dependable service by all necessary carriers shall be maintained and the full use of the highways preserved to the public.

~~SEC. 2.—Article 5.4 (commencing with Section 1543) is added~~

SEC. 2. Section 5142 is added to the Public Utilities Code, to read:

5142. (a) No household goods carrier, owner, officer, agent, or employee of a household goods carrier, may exercise a self-help remedy or fail to timely deliver household goods, personal effects, used office, store, or institution furniture and fixtures in their possession, unless the debtor and consignor were provided a written qualifying contract.

(b) The commission shall adopt rules and regulations for written qualifying contracts that shall, at a minimum, provide an estimated cost of service, delivery destination, delivery date, and a description of the services to be rendered, to be delivered within

1 a reasonable time. Every qualifying contract shall be executed in
2 writing by the debtor prior to services being performed under the
3 qualifying contract. Any change order to the written qualifying
4 contract shall be in writing, shall specify any change to the terms
5 of the contract, and shall be executed in writing by the debtor.
6 Whenever circumstances develop after the commencement of
7 service that render the delivery date inaccurate, the household
8 goods carrier shall promptly notify the debtor, consignor, and
9 consignee of the change in circumstances and of the new delivery
10 date.

11 (c) No household goods carrier, owner, officer, agent, or
12 employee of a household goods carrier, shall fail to timely deliver
13 household goods, personal effects, used office, store, or institution
14 furniture and fixtures in their possession to the consignee, at the
15 destination and on the date specified in the qualifying contract,
16 upon request of the consignee and tender of payment for the
17 estimated cost of service and any valid change orders for service.

18 (d) For purposes of this section:

19 (1) "Consignee" means the person named in the bill of lading
20 to whom or to whose order the bill promises delivery.

21 (2) "Consignor" means the person named in the bill of lading
22 as the person from whom the goods have been received for
23 shipment.

24 (3) "Debtor" means the person obligated to pay a freight
25 charge of a household goods carrier.

26 (4) "Delivery date" means the reasonable estimate as to when
27 the property will be ready for delivery to the shipper at the
28 destination specified in the contract.

29 (5) "Delivery destination" means the actual physical address
30 where the property is to be delivered.

31 (6) "Estimated cost of service" means a written document
32 prepared by the household goods carrier showing the total cost of
33 services to be performed by the household goods carrier. A "not
34 to exceed price" is not an "estimated cost of service."

35 (7) "Executed" means to sign or otherwise indicate acceptance
36 of the contract, and includes acceptance communicated by
37 electronic mail or facsimile transmission.

38 (8) "Reasonable time" means a commercially reasonable time
39 prior to taking delivery of property from the consignor, that in the
40 determination of the commission allows the debtor and consignor

1 *to make a reasoned and informed choice of whether to accept the*
2 *contract.*

3 (9) *“Request” includes oral, telephonic, electronic, or written*
4 *requests to a household goods carrier, owner, officer, agent, or*
5 *employee to deliver property.*

6 SEC. 3. *Article 5.4 (commencing with Section 5243) is added*
7 *to Chapter 7 of Division 2 of the Public Utilities Code, to read:*

8
9 Article 5.4. Subhauling Agreements

10
11 5243. No household goods carrier may transport household
12 goods under a subhauling agreement unless each of the following
13 occurs:

14 (a) The customer or shipper is provided with reasonable notice
15 of the subhauling agreement and consents in writing to the
16 subhauling arrangement. Reasonable notice shall be given to the
17 customer or shipper within 24 hours after the household goods
18 carrier enters into the subhauling agreement. The written consent
19 of the customer or shipper shall be obtained prior to the beginning
20 of work. The customer may withhold consent to the subhauling
21 arrangement without penalty or charge.

22 (b) The subhauler complies with the requirements of this
23 chapter.

24 (c) The household goods carrier and subhauler are jointly and
25 severally liable for any loss or damage caused by the subhauler.

26 5244. The commission shall ~~make any rules and regulations~~
27 *adopt any rules and regulations it determines to be necessary to*
28 *enforce the requirements of this article.*

29 ~~SEC. 3.—~~

30 SEC. 4. *Section 5311 of the Public Utilities Code is amended*
31 *to read:*

32 5311. (a) Every household goods carrier and every officer,
33 director, agent, or employee of any household goods carrier who
34 violates or who fails to comply with, or who procures, aids, or
35 abets any violation by any household goods carrier of any
36 provision of this chapter, or who fails to obey, observe, or comply
37 with any order, decision, rule, regulation, direction, demand, or
38 requirement of the commission, or of any operating permit issued
39 to any household goods carrier, or who procures, aids, or abets any
40 household goods carrier in its failure to obey, observe, or comply

1 with any such order, decision, rule, regulation, direction, demand,
2 requirement, or operating permit, is guilty of a misdemeanor, and
3 is punishable by fine of not more than one thousand dollars
4 (\$1,000) or by imprisonment in the county jail for not more than
5 three months, or both.

6 *(b) It is a violation of this section for any household goods*
7 *carrier, owner, officer, agent, or employee of a household goods*
8 *carrier, to engage in self-help or fail to timely deliver household*
9 *goods, personal effects, used office, store, or institution furniture*
10 *and fixtures in their possession, without having provided the*
11 *debtor and consignor with a written qualifying contract pursuant*
12 *to subdivision (a) of Section 5142. Refusing or failing to timely*
13 *deliver household goods, personal effects, used office, store, or*
14 *institution furniture and fixtures in their possession, pursuant to*
15 *this subdivision, upon the request of a peace officer or upon the*
16 *request of the debtor, consignor, or consignee made in the presence*
17 *of a peace officer, is a public offense committed in the officer's*
18 *presence under Section 836 of the Penal Code.*

19 *(c) It is a violation of this section for any household goods*
20 *carrier, owner, officer, agent, or employee of a household goods*
21 *carrier, to fail to timely deliver household goods, personal effects,*
22 *used office, store, or institution furniture and fixtures in their*
23 *possession to the consignee, at the destination and on the date*
24 *specified in the qualifying contract, upon request of the consignee*
25 *and tender of payment for the estimated cost of service and any*
26 *valid change orders for service, pursuant to subdivision (c) of*
27 *Section 5142. Refusing or failing to timely deliver household*
28 *goods, personal effects, used office, store, or institution furniture*
29 *and fixtures in their possession, pursuant to this subdivision, upon*
30 *the request of a peace officer or upon the request of the debtor,*
31 *consignor, or consignee made in the presence of a peace officer, is*
32 *a public offense committed in the officer's presence under Section*
33 *836 of the Penal Code.*

34 SEC. 5. Section 5317.5 is added to the Public Utilities Code,
35 to read:

36 5317.5. The commission shall ensure that this chapter is
37 enforced and obeyed, and that violations thereof are promptly
38 prosecuted and penalties due the state therefor recovered and
39 collected, and to this end it may sue in the name of the people of
40 the State of California. Upon the request of the commission, the

1 *Attorney General or the district attorney of the proper county or*
2 *city and county shall aid in any investigation, hearing, or trial had*
3 *under this chapter. The Attorney General, a district attorney of the*
4 *proper county or city and county, or a city attorney may institute*
5 *and prosecute actions or proceedings for the enforcement of this*
6 *chapter and for the punishment of all violations thereof, except for*
7 *the collection of a penalty.*

8 *SEC. 6. Article 8.5 (commencing with Section 5323) is added*
9 *to Chapter 7 of Division 2 of the Public Utilities Code, to read:*

10
11 *Article 8.5. Consumer Remedies*
12

13 *5323. Any person injured by reason of a violation of Section*
14 *5142 may, as an alternative to making a complaint to the*
15 *commission, sue therefor in any court having jurisdiction in the*
16 *county where the defendant resides or is found, or any agent*
17 *resides or is found, or where service may be obtained, without*
18 *respect to the amount in controversy, and to recover three times the*
19 *actual damages sustained by him or her or one thousand dollars*
20 *(\$1,000), whichever is greater; interest on his or her actual*
21 *damages, and preliminary or permanent injunctive relief when and*
22 *under the same conditions and principles as injunctive relief is*
23 *granted by courts generally under the laws of this state and the*
24 *rules governing these proceedings, and shall be awarded a*
25 *reasonable attorneys' fee together with the costs of the suit.*

26 *SEC. 7. No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution because*
28 *the only costs that may be incurred by a local agency or school*
29 *district will be incurred because this act creates a new crime or*
30 *infraction, eliminates a crime or infraction, or changes the penalty*
31 *for a crime or infraction, within the meaning of Section 17556 of*
32 *the Government Code, or changes the definition of a crime within*
33 *the meaning of Section 6 of Article XIII B of the California*
34 *Constitution.*